

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOLLI WRICE,

Defendant.

Case No. 10-cr-40065-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Wrice's motion to withdraw (Doc. 93) her motion for reconsideration. On January 30, 2013, this Court warned Wrice that if she failed to withdraw her pending motion for reconsideration on or before February 25, 2013, the Court would construe it as a § 2255 motion. In response, Wrice filed the instant motion both withdrawing her motion for reconsideration and asking that the Court "considerately and expeditiously review the pending [§] 2255 motion as it stands on record at the present time." Doc. 93.

At present, Wrice does not have a pending § 2255 motion. The Court infers that Wrice wants the Court to construe her motion for reconsideration as a § 2255 motion; however, absent a *clear* indication of this intent from Wrice, the Court will not so construe her motion when she has simultaneously filed a motion to withdraw the same motion that would be construed as a § 2255 motion. *See Castro v. United States*, 540 U.S. 375, 377 (2003) ([T]he court cannot so recharacterize a pro se litigant's motion as the litigant's first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.').

Accordingly, the Courts gives Wrice until **March 19, 2013**, to clarify whether she wishes (1) the Court to construe her motion for reconsideration as a § 2255 motion and thus be subject to the law's 'second or successive' restrictions; or (2) to withdraw her motion for reconsideration and not have her motion construed as a § 2255 motion.

IT IS SO ORDERED.

DATED: February 20, 2013

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE